SCHLACTER & ASSOCIATES
Attorneys for Plaintiff
450 Seventh Avenue
New York, New York 10123
(212) 695-2000
By: JED R. SCHLACTER (JRS-4874)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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SMILES FASHION CORP., **16 Civ.**

Plaintiff,

-against- **COMPLAINT**

FASHION FLAIR LLC,

Defendant.

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Plaintiff, by its attorneys, SCHLACTER & ASSOCIATES, for its complaint against defendants, alleges:

JURISDICTION

1. This action, as more fully stated below, is for, copyright infringement; arises under Title 17 of the United States Code; jurisdiction is vested in this Court under 28 U.S.C. Section 1338(a); and proper venue exists under 28 U.S.C. Sections 1400(a) and 1391.

THE PARTIES

2. Plaintiff, SMILES FASHION CORP. (hereinafter referred to as "Smiles") is a domestic corporation duly organized and existing under the laws of the State of New York, with an office located at 1407 Broadway, New York, NY 10018. Plaintiff is a manufacturer/importer of ladies' garments, for sale to the retail trade.

3. Upon information and belief, defendant, FASHION FLAIR LLC (hereinafter referred to as defendant or "Fashion Flair") is a limited liability company organized under the laws of the State of Florida, with places of business at 8732 Lost Cove Drive, Orlando, FL 32819, and 1410 Broadway, Suite 1404, New York, NY 10018, and sells ladies' garments to the retail trade.

PLAINTIFF'S COPYRIGHTED WORK

4. In 2014 an original work of art was created by the design firm known as Keeler Gordon Limited ("Keeler").

5. On May 30, 2014, for fair consideration, Keeler transferred and assigned, in writing, any and all ownership and rights to the copyright of said design to the plaintiff.

6. Plaintiff duly registered its design, identified as Print #9371, with the U.S. Copyright Office, and received Certificate of Copyright Registration No. VAu 1-177-283 effective July 11, 2014.

7. Since on or about February 24, 2015, plaintiff's Print #9371 has been produced on ladies' garments by plaintiff, and sold to the retail trade.

8. Print # 9371 is wholly original and is copyrightable subject matter under the laws of the United States.

9. All of the provisions of Title 17 of the United States Code, and all of the laws governing Copyright, have been duly complied with.

10. Plaintiff is the sole proprietor of all rights, title and interest in and to the Copyright of Print #9371.

11. A photocopy of plaintiff's Certificate of Registration for said copyrighted design is annexed hereto as Exhibit A.

12. Subsequent to the publication by plaintiff of its Print #9371 involved herein, defendant, with full knowledge of the rights of plaintiff therein, infringed plaintiff's Copyright on such design by reproducing, displaying, manufacturing, printing, reprinting, yarn-dyeing, publishing, vending, distributing, selling, promoting and/or advertising garments bearing a design thereon which contained substantial material copied from said copyrighted fabric design or by causing and/or participating in such reproduction by reproducing, displaying, manufacturing, printing, reprinting, yarn-dyeing, publishing, vending, distributing, selling, promoting and/or advertising, all in violation of the rights of plaintiff under Section 106 of the Copyright Law, Title 17 U.S.C.

13. A photocopy of plaintiff's copyrighted design known as Print #9371 is annexed hereto as Exhibit B. A photocopy of defendant's said infringement is annexed hereto as Exhibit C.

14. All of defendant's acts, as set forth herein, were performed without the permission, license or consent of plaintiff.

15. Prior to the infringing actions of the defendant, the plaintiff had sold and sampled its Print #9371 to numerous parties in the apparel industry.

16. Plaintiff has gone to great expense in producing and promoting the sale of fabrics bearing its copyrighted design Print #9371.

17. Plaintiff's copyrighted design incorporated carefully prepared and fashionable color combinations, which color combinations aided greatly in the sale of garments bearing the copyrighted design.

18. Defendant has a design obviously copied from plaintiff's copyrighted design, which copy defendant has been offering and, upon information and belief, continues to offer for sale. The design printed on defendant's' garments is virtually identical to, if not actually identical to, plaintiff's copyrighted design.

19. Defendant's' infringing design (Exhibit C) is unmistakably copied from plaintiff's design (Exhibit B).

20. Defendant's garments, when viewed by a consumer, would appear to be substantially similar to a garment of like style bearing plaintiff's copyrighted design.

21. Defendant has also produced its garments incorporating the copied design in a color combination virtually identical to a color combination of plaintiff's design.

22. Defendant, by its acts as aforesaid, has taken advantage of the knowledge and skill of plaintiff and of the good will developed by plaintiff and has capitalized upon the market created for plaintiff's design.

23. Upon information and belief, the defendant has had access to plaintiff's copyrighted design through several means, including but not limited to (a) by having had access to showrooms that were displaying the plaintiff's design in garments; (b) by having had access to illegally distributed copies of the plaintiff's copyrighted design by third-party vendors, including without limitation international and/or overseas converters, mills and factories; and (c) by having had access to garments in the marketplace manufactured from lawfully produced fabric bearing the copyrighted design. In addition, the virtually identical copy of plaintiff's copyrighted design produced and sold by defendant in its garments could only have been done by having had access to plaintiff's copyrighted design.

24. By defendant's use of a design and color combination virtually identical with plaintiff's design and color combination, defendant has been and will continue to be able to pass off and sell its garments as a substitute for the garments sold by customers of plaintiff.

25. Plaintiff has been damaged by the acts of defendant alleged herein in an amount not as yet known, but believed to be in excess of One Million ($1,000,000.00) Dollars. The infringing activities of defendant are further and continuously damaging plaintiff in a manner for which plaintiff has no adequate remedy at law.

WHEREFORE, plaintiff demands:

(1) That defendant, its agents, employees and servants be enjoined permanently from infringing the said Copyright No. VAu 1-177-283 of plaintiff covering its Print #9371, in any

manner and from publishing, selling, marketing or otherwise disposing of any textiles and garments imprinted with designs copied from plaintiff's said copyrighted design.

(2) That defendant be required to pay to plaintiff damages to be determined at trial, but believed to exceed One Million ($1,000,000.00) Dollars, plus interest, which plaintiff has sustained in consequence of defendant's infringement of said Copyright, and to account for:

(a) all gains, profits and advantages derived by defendant in its infringement of plaintiff's Copyright or such damages as to the Court shall appear proper within the provisions of the copyright statutes, including but not limited to statutory damages.

(3) That defendant be required to deliver up to be impounded, all copies of said reproduction of said works of art in its possession or under its control, and to deliver up for destruction all infringing copies and rollers, screens, plates, molds, and other matter for making such infringing copies.

(4) That defendant pay to plaintiff the costs of this action and reasonable attorneys' fees to be allowed to the plaintiff by the Court.

(5) That plaintiff have such other and further relief as is just.

Dated: New York, New York
December 7, 2016

SCHLACTER & ASSOCIATES
Attorneys for Plaintiff

By: ______________________

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EXHIBIT A

Certificate of Registration

This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante

Register of Copyrights, United States of America

Registration Number

VAu 1-177-283

Effective date of registration:

July 11, 2014

Title

Title of Work: PRINT #9371

Completion/Publication

Year of Completion: 2014

Author

- **Author:** KEELERGORGON

Author Created: 2-D artwork

Work made for hire: Yes

Citizen of: United Kingdom **Domiciled in:** United Kingdom

Copyright claimant

Copyright Claimant: SMILES FASHION CORP

1407 BROADWAY, SUITE #1622, NEW YORK, NY, 10018

Transfer Statement: By written agreement

Rights and Permissions

Organization Name: SMILES FASHION CORP

Name: SUDHA KAPOOR

Address: 1407 BROADWAY

SUITE #1622

NEW YORK, NY 10018

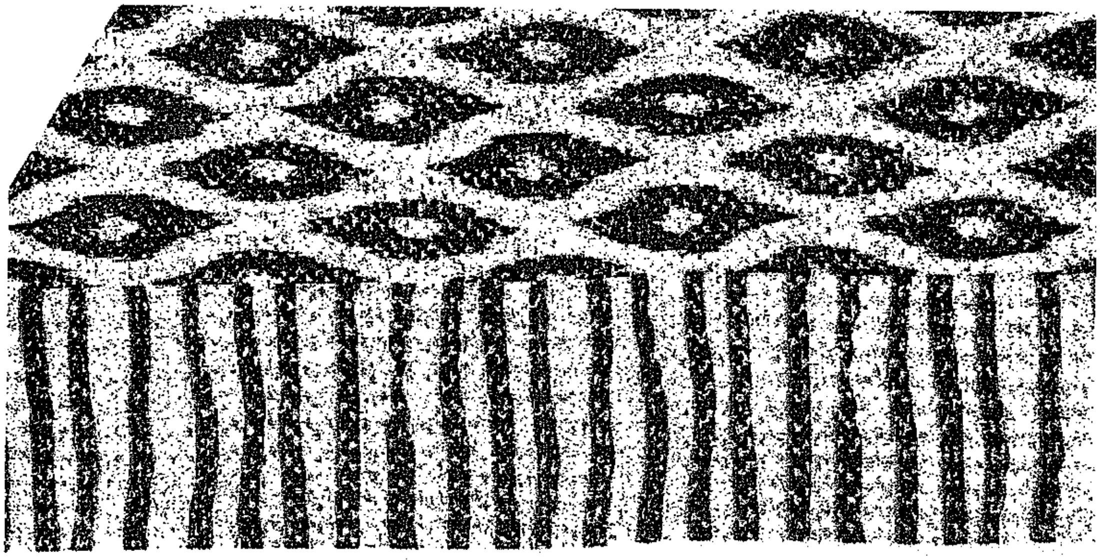
Certification

Name: SUDHA KAPOOR

Date: July 11, 2014

Applicant's Tracking Number: PRINT #9371

EXHIBIT B



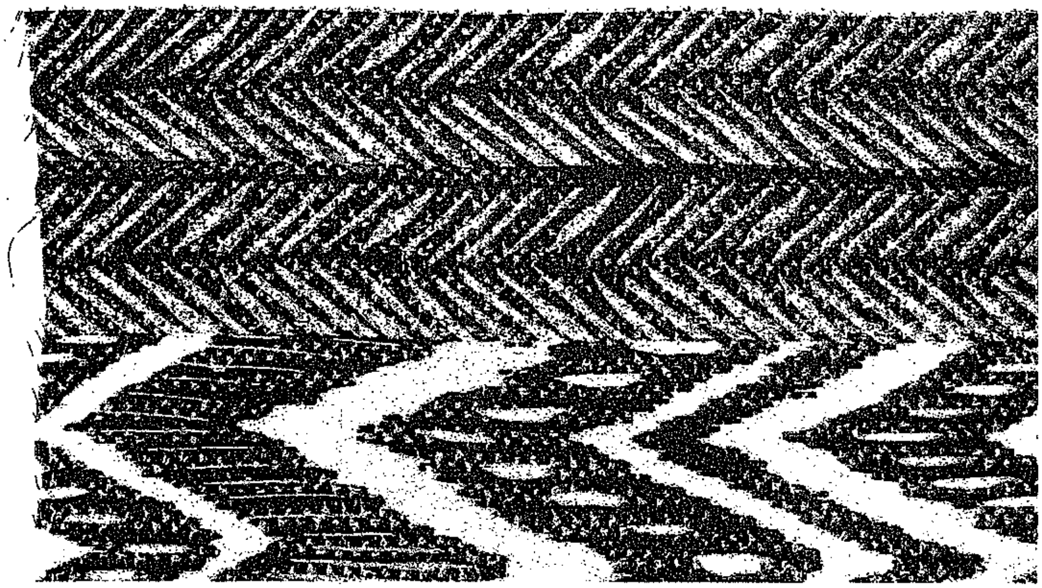
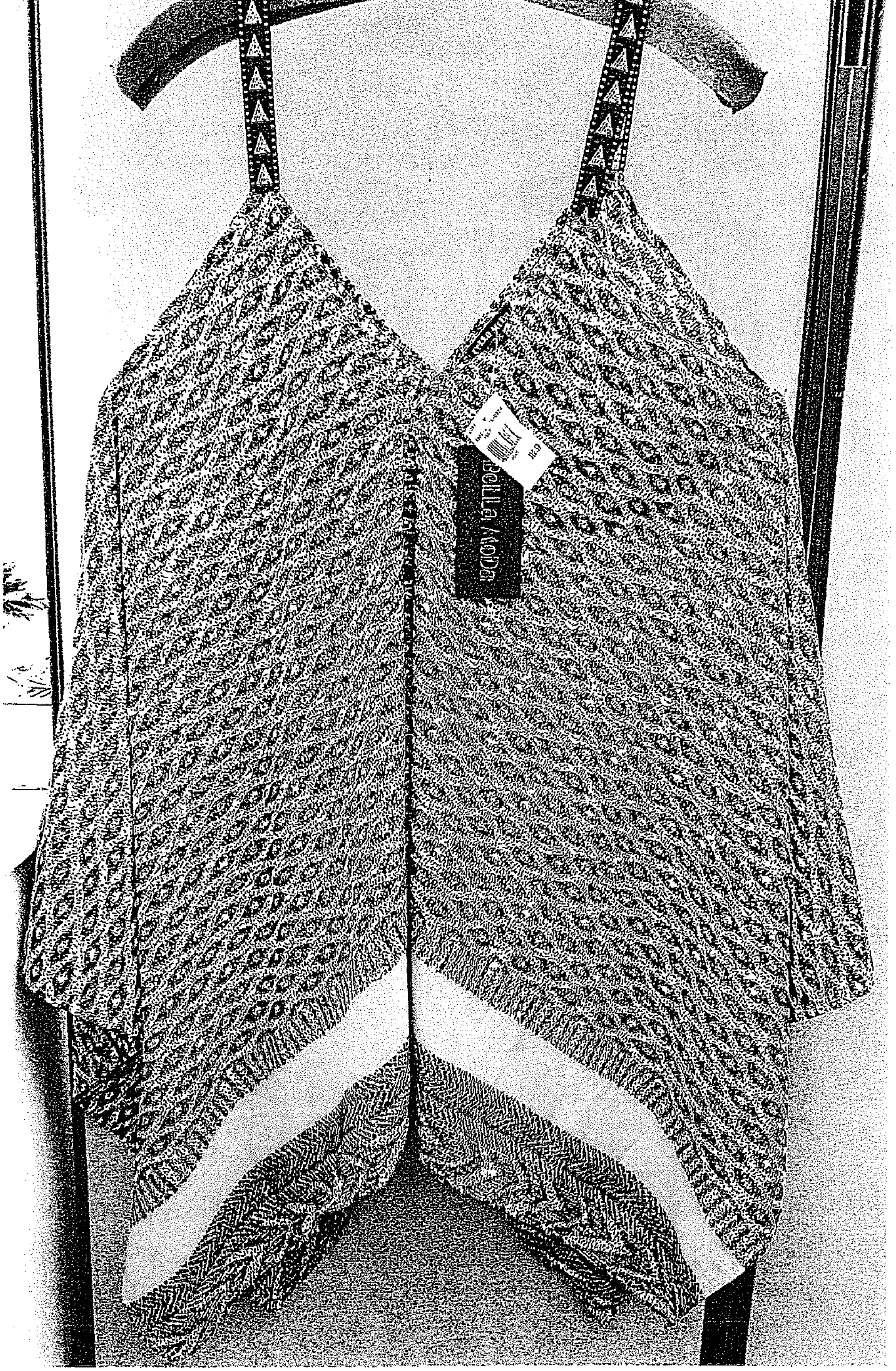


EXHIBIT C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